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STATE FOR EUR/CE J. MOORE

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SUBJECT: U.S. COMPANY BUYS TROUBLED SHARES IN SLOVAK OIL PIPELINE

REF: 2009 BRATISLAVA 149

Summary and Action Request

¶1. (SBU) Capitol Project Partners, a small U.S. consulting and investment company, has notified us that it has acquired stock in Transpetrol, the state-owned oil pipeline in Slovakia. The company acquired the stock from a Czech company which had recently bought the shares from a Slovak investor who is in prison for fraud in connection with his acquisition of these same shares. The validity of the shares are the subject of a long series of court battles running back 12 years and involving some 150 open cases at this time. The American company intends to assert its ownership rights. Given the complex legal history of the shares in question, we request guidance from Washington on how to handle requests for advocacy in this case. Our proposed approach would be to ask that the GoS give a fair hearing to the U.S. company and to clarify any legal ambiguity in the status of the assets claimed. End summary.

A New Wrinkle in an Old Story

¶2. (SBU) In early January 2010 the U.S. firm Capitol Project Partners, LLC, notified us that the company, through its investment fund CAPP III, LLC, had acquired stock representing a 34% stake in Transpetrol, a crude oil pipeline operator recently re-acquired by the Slovak government. Embassy staff talked with several partners in the firm, at their request, on January 12, where we learned that the company anticipates asking the USG for advocacy in asserting its ownership rights in Transpetrol. The ownership of these shares is the subject of a decade-long legal battle between the GoS and the former owner, Slovak businessman and convicted felon Ignac Ilcisin, who is currently in prison for fraud connected to his Transpetrol claim. Ilcisin had sold the disputed shares in mid-2009 to a Czech company, Quick Power Plant, which in turn sold them on to CAPP III at the end of 2009. The GoS has not recognized the legitimacy of Ilcisin's shares since shortly after they were issued over ten years ago.

¶3. (SBU) Our interlocutors at Capitol said that they had done careful research on the legal status of the shares and were convinced that the shares are legitimate, and that the GoS had dealt in bad faith with Ilcisin. They anticipated asking the Embassy, as well as DoS and DoC in Washington, to intervene with the GoS to back their claim.

¶4. (SBU) The legality of Ilcisin's claim is at best troubled, and it has pitted two rival "highest courts" against each other. In view of this fact, and of the distinct possibility that Ilcisin's original claim to the shares was fraudulent, we intend to approach advocacy on behalf of Capitol very carefully. We would appreciate Washington's guidance on how to handle requests for intervention at the highest levels of the Slovak government.

¶5. (SBU) One question to consider is what the U.S. company's intentions are. From the company's website (www.cappa.us), it appears to be a small consulting firm of seven partners and associates, some of whom have served as U.S. Government appointees in the recent past. Capitol has three private equity funds, only the first of which appears to have any SEC filings on record. The first two CAPPAs are described as "real estate bridge lending and distressed asset investments." The CAPPAs III Fund is described as focusing on "energy infrastructure development projects in emerging markets utilizing support from multilateral and U.S. based development and export credit agencies." Given this background, it appears possible that Capitol will aim for a settlement from the GoS than that it will seek an active role in operating Transpetrol.

Background on the Claim

¶6. (U) Ilcisin acquired the shares as a settlement for a case that his company, Tradeunion, won against the local tax authority in 1998 over his use of a state-owned building. The value of the award was SKK 43 million (roughly \$1.2 million at the time). The state did not have cash for the award, so Tradeunion was allowed to participate in a transfer of Transpetrol shares in lieu of cash from the state.

¶7. (U) The legitimacy of that Transpetrol stock sale was subsequently challenged, and the transaction was voided a month after it closed. Criminal charges were filed against Ilcisin and the six other entrepreneurs, but these charges were subsequently voided. In 2001, the Supreme Court decided that the "execution," as the award of the shares is technically

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termed, was legal. A subsequent Supreme Court decision in 2004, triggered by Ilcisin's attempt to call a meeting of Transpetrol shareholders, reversed the 2001 decision. The Constitutional Court in 2007 overturned that decision, arguing that the principle of legal certainty prevented the Supreme Court from reversing its first decision. In 2008, the Supreme Court ruled against the Constitutional Court on the principle of "ius ex iniuria non orfitur," i.e., that no legal right can result from an unlawful act. The Constitutional Court asserted its supremacy again in 2009, saying that the issue of ownership had been decided (in Ilcisin's favor) in 2001, and that it enjoys the status of final arbiter. A lower court then allowed Ilcisin to claim his status as a shareholder (while not ruling on the actual ownership of the disputed shares). This ruling was overturned by a May 2009 Supreme Court decision.

¶8. (U) In the brief window before the lower court was overturned, Ilcisin attempted to call a shareholders' meeting on April 29, 2009. These latest developments, together with the completion of a complex buy-back of a 49% stake in Transpetrol from foreign investors (reftel), prompted Slovak prosecutors to act against Ilcisin. According to prosecutors, Ilcisin used his claimed status as head of Transpetrol to attempt in 1996 to transfer EUR 12 million to a certain Czech company in payment of what the prosecutors term a non-existent debt. Accordingly, on June 30, 2009, Ilcisin was convicted of fraud by the Zilina District Court and sentenced to 9 years in prison; Ilcisin is in prison pending appeal. (Note: Even without this conviction Ilcisin is still a felon, based on an earlier conviction of illegal currency trading. End note.)

¶9. (SBU) Incredible though this may seem, our recap of the history of Ilcisin and his claim to 34% of Transpetrol is a vast simplification: there are still some 150 open legal cases pertaining to various aspects of the dispute. Roughly speaking, these cases fall into three groups of concerns: 1) the legality of the execution itself, 2) the registration of the shares in the Central Repository (essentially a central registry of all stock transactions), and 3) the right to call for a shareholders' meeting, which in turn depends on one's status as

a shareholder. According to our contacts in the legal community here, a clear preponderance of legal experts in Slovakia views Ilcisin's claim as fraudulent, though the behavior of the GoS, including the Slovak courts, is hardly a model of judicial probity, clarity, or principled behavior.

Proposed Approach

¶10. (SBU) If Capitol pursues a formal request for advocacy in this case, we would propose simply asking the GoS to hear out the American company's assertion of ownership rights and respond to it fairly. Where there is lack of legal clarity in these rights, the GoS should seek to clarify them.
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